

Claimant continued to experience problems and on April 14, 2005, came before the ALJ requesting a change of treating physician. This request was granted and respondent was ordered to provide a list of three physicians from which claimant could choose a treater. Two of the doctors on the list, Robert L. Eyster, M.D., and John P. Estivo, D.O.,

refused to see claimant. The third doctor on the list, Paul S. Stein, M.D., examined claimant on August 24, 2005, finding claimant at maximum medical improvement and releasing claimant without restrictions.

On April 3, 2006, after suffering ongoing symptoms for eight months after Dr. Stein's release, claimant was sent to Dr. Fluter by her attorney. Dr. Fluter concluded claimant suffered from post-concussion symptoms and recommended claimant be seen by a neurologist and an otolaryngologist. A copy of Dr. Fluter's report was then forwarded to Dr. Stein, who agreed with the recommended referral to the otolaryngologist. However, Dr. Stein did not feel claimant needed to see a neurologist. The ALJ, in the preliminary hearing Order, appointed Dr. Fluter as the authorized treating physician.

Respondent argues that the ALJ exceeded her jurisdiction in appointing Dr. Fluter. Claimant, on the other hand, argues that the Board does not have the jurisdiction to consider this matter on appeal from a preliminary hearing order.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?¹

The ALJ has the jurisdiction to determine medical treatment at a preliminary hearing.²

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

¹ K.S.A. 44-534a(a)(2).

² K.S.A. 44-534a(a)(2).

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

K.S.A. 44-534a authorizes an administrative law judge to award medical compensation from a preliminary hearing. The ALJ did not exceed her jurisdiction in ordering some.

This Board Member finds the Board does not have the jurisdiction to consider this matter at this time. Respondent's appeal is dismissed, and the Order of the ALJ remains in full force and effect.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2004 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 5, 2006, remains in full force and effect, and the appeal of respondent in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October, 2006.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

⁴ K.S.A. 44-534a.